

MRS. JANE P. MYERS

JULY 4 (legislative day, JUNE 27), 1952.—Ordered to be printed

Mr. KILGORE, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H. R. 3268]

The Committee on the Judiciary, to which was referred the bill (H. R. 3268) for the relief of Mrs. Jane P. Myers, having considered the same, reports favorably thereon without amendment and recommends that the bill do pass.

PURPOSE

The purpose of this private bill is to pay to Mrs. Jane P. Myers, of Raton, N. Mex., in full settlement of all claims against the United States, the sum of \$953 representing the amount of compensation she would have received for the period beginning on January 1, 1945, and ending on March 27, 1946, had she filed her claim within 1 year after the date fixed by the Department of the Army as the date of the death of her husband, Staff Sgt. John A. Myers.

STATEMENT

John A. Myers (XC-3759774) went on active duty with the United States Army on November 3, 1942. He was held in a missing-in-action status from July 28 until December 4, 1944, when sufficient evidence was received to establish the fact of his death on July 28, 1944.

After the receipt of notice from the War Department of the serviceman's death, the Veterans' Administration mailed a letter to Mrs. Jane P. Myers, 424 Cook Avenue, Raton, N. Mex., on December 23, 1944. This letter enclosed an application for death compensation and gave instructions for the completion of such an application. By this letter Mrs. Myers was informed that the death compensation was payable in addition to any national service life insurance benefits to which she might be entitled. Mrs. Myers completed the form, and it was received in the Veterans' Administration on January 8, 1945.

From the facts set forth in the application the Veterans' Administration was informed that Mrs. Myers was expecting the birth of a child. Consequently the Veterans' Administration requested Mrs. Myers, by a letter dated February 19, 1945, to furnish proof of her marriage to Staff Sgt. John A. Myers, and it further advised her that a certified copy of the public record of the birth of her child would be required before consideration could be given the payment of benefits on behalf of the child. In this same letter Mrs. Myers was informed that the failure to submit the evidence requested within 1 year from the date of the letter would preclude any payments based on her pending application.

Another letter was sent to the Veterans' Administration dated September 25, 1945, from the law offices of Crampton & Robertson, Raton, N. Mex., to request information regarding a pension or allotment on behalf of Mrs. Myers' infant son. The answer of the Veterans' Administration dated December 28, 1945, was erroneously sent to another claimant and was returned to the Veterans' Administration in January 1946. Neither this letter nor any other letter was sent to either Mrs. Myers or the above-mentioned law firm to inform them of this mistake.

By a letter of March 9, 1946, the Veterans' Administration advised Mrs. Myers that, since she had failed to furnish the required information within the 1-year period, she should submit another claim for death compensation together with proof of her marriage to John A. Myers and the birth of her son. This second application form was completed and sent to the Veterans' Administration on March 28, 1946, but Mrs. Myers, the claimant, failed to enclose a copy of her marriage certificate and proof of the birth of her son. By a letter dated May 23, 1946, the claimant was again requested to furnish this information and on August 22, 1946, the required evidence was submitted.

As a result Mrs. Myers was awarded death compensation for herself and for her minor son at the rate of \$65 monthly from March 28, 1946, the date of filing the second application. At present the claimant is receiving \$105 in payments monthly.

The committee is aware, as the Veterans' Administration report indicates, that the award of death compensation in this case, was made from the earliest date permitted under existing law. Since there was no other avenue by which this claimant could receive death compensation for the period beginning on January 1, 1945, and ending on March 27, 1946, she has petitioned Congress for relief.

The committee has had an opportunity to consider a similar bill S. 858 Eighty-second Congress, second session, for the relief of Mrs. Pauline J. Gourdeaux. That bill was approved by the Senate Judiciary Committee after careful consideration by a subcommittee of three Senators, and it was passed by the Senate on January 24, 1952. It has since become Private Law 557, Eighty-second Congress, second session. In Senate Report No. 1093, which accompanied S. 858, this committee recognized the fact that a widow faced with the problems surrounding her husband's death might not pursue "her legal rights as diligently as the statute required." It is readily apparent that this claimant was not only subjected to the distress of having lost her spouse but found her time occupied in the events which surrounded the birth of her son. With such an understanding, the

committee is of the opinion that the strict adherence to the letter of the law in this instance would result in a denial of the equitable consideration to which this claimant is entitled. Consequently, the committee recommends that this bill, H. R. 3268, be considered favorably.

The report of the Veterans' Administration dated May 17, 1951, is set forth in full below. Attention is directed to House Report No. 2210, to accompany H. R. 3268, Eighty-second Congress, second session.

VETERANS' ADMINISTRATION,
Washington 25, D. C., May 17, 1951.

HON. EMANUEL CELLER,
Chairman, Committee on the Judiciary,
Washington 25, D. C.

DEAR MR. CELLER: Further reference is made to your request for a report on H. R. 3268, Eighty-second Congress, a bill for the relief of Mrs. Jane P. Myers which provides as follows:

"That notwithstanding the provisions of paragraph I, part I, Veterans Regulation Numbered 2 (a), as amended, the Administrator of Veterans' Affairs is authorized and directed to pay to Mrs. Jane P. Myers, widow of John A. Myers (XC-3759774), a World War II veteran, who was killed in action on July 28, 1944, the amount of compensation which would have been payable to her on her own behalf and on behalf of her infant son if evidence of her marriage to the veteran and of the birth of her son had been furnished to the Veterans' Administration in strict conformity with the provisions of said regulation."

According to a report from the Department of the Army, John A. Myers (XC-3759774) entered upon active service in the United States Army November 3, 1942; was held to have been in a missing-in-action status from July 28, 1944, until such absence was terminated on, December 4, 1944, when evidence considered sufficient to establish the fact of death on July 28, 1944, was received.

After receipt of notice from the Department of the Army of the death of the serviceman, the Veterans' Administration on December 23, 1944, mailed a letter to the widow of the deceased serviceman, Mrs. Jane Pesikin Myers, 424 Cook Avenue, Raton, N. Mex., expressing regret and giving instructions for the completion of an application form for death compensation, which was disclosed, and its return to the Veterans' Administration. The widow was advised that such benefits were payable in addition to any Government life insurance benefits to which she might be entitled. The form was completed by Mrs. Myers and received in the Veterans' Administration on January 8, 1945. Information set forth in the application indicated that Mrs. Myers was expecting the birth of a child. The Veterans' Administration, in a letter dated February 19, 1945, requested Mrs. Myers to furnish proof of her marriage to the serviceman and advised her that a certified copy of the public record of the birth of her child would be required before consideration could be given the payment of benefits on behalf of the child. Mrs. Myers was further advised that failure to submit the evidence requested within 1 year from the date of the letter would preclude any payments based on her pending application.

Mr. E. C. Crampton of the law offices of Crampton and Robertson, Raton, N. Mex., in a letter dated September 25, 1945, addressed to the War Department Office of Dependency Benefits, 213 Washington Street, Newark, N. J., requested information regarding pension or allotment on behalf of Mrs. Myers' infant son. This letter was forwarded to the Veterans' Administration, which acknowledged receipt thereof in a letter dated December 28, 1945, addressed to Mrs. Myers, and made reference to the prior letter requesting proof of marriage and the public record of the birth of her son. This letter was erroneously placed in an envelope addressed to another claimant, and was returned to the Veterans' Administration in January 1946. The letter was not forwarded to Mrs. Myers, but by letter of March 9, 1946, she was advised that since she had failed to furnish the required information within the period of a year from the date of the original request, it was suggested that she submit another claim for death compensation together with the evidence previously requested. The second application form was completed and returned to the Veterans' Administration on March 28, 1946, however proof of Mrs. Myers' marriage to the serviceman, and the certified copy of the

public record of the birth of her son were still not forthcoming, and the Veterans' Administration again, in a letter dated May 23, 1946, advised Mrs. Myers of the necessity for furnishing such evidence. Not until August 22, 1946, did the Veterans' Administration receive the requested evidence. On September 3, 1946, Mrs. Myers was awarded death compensation for herself and minor son at the monthly rate of \$65, effective March 28, 1946, the date of filing the second application with the Veterans' Administration. Mrs. Myers is presently in receipt of such payments in the amount of \$105 monthly.

The award of death compensation in this case has been made from the earliest date permitted by law. The widow's entitlement to death compensation, based upon her original application, was dependent upon the timely furnishing of any necessary proof in support thereof as prescribed by paragraph I (a) (2), part I Veterans Regulation No. 2 (a), as amended, which provides as follows:

"In the event the claimant's application is not complete at the time of original submission, the Veterans' Administration will notify the claimant of the evidence necessary to complete the application and if such evidence is not received within 1 year from the date of request therefor, pension may not be paid by virtue of that application."

As previously noted, by letter dated February 19, 1945, the Veterans' Administration, in conformity with the quoted law, notified Mrs. Myers of the evidence necessary to complete her claim and the time within which it must be furnished to permit an award thereon.

It has been contended, in effect, that had the letter of December 28, 1945 (which merely restated the information contained in the letter of February 19, 1945) been properly dispatched, the evidence in question would have been furnished by the claimant within 1 year from February 19, 1945, and this an award could have been made on the original application. While it is unfortunate that the letter of December 28, 1945, was misdirected, as described above, any such contention appears highly speculative. In this connection, it may be noted that Mrs. Myers failed to submit the required evidence with her second application, and when requested, took almost 3 months to furnish such evidence.

Although it is not entirely clear from the text of the bill, it appears from information available to the Veterans' Administration that H. R. 3268 is designed to pay Mrs. Myers the amount of death compensation to which she would have been entitled if she had timely furnished the necessary evidence in support of her first application for such compensation. In the event of favorable consideration, clarification of the bill is indicated. Had Mrs. Myers timely furnished the mentioned evidence, she would have been entitled to death compensation from January 1, 1945, the date following the last day on which she received allotment and allowance from the Department of the Army. Such death compensation payments for the period in question would have amounted to \$953. This amount represents death compensation computed at the rate of \$50 monthly from January 1, 1945, through February 1, 1945, and at the rate of \$65 monthly from February 2, 1945, the date of the birth of the veteran's posthumous child, through March 27, 1946, the date preceding the day of the award of death compensation in her case.

For the information of the committee it is observed that Mrs. Myers was named beneficiary of two policies of national service life insurance, totaling \$10,000, which are being paid in 240 monthly installments at the total rate of \$55.10 per month.

The circumstances of this case have been carefully considered. No reason is apparent why it should be singled out for special legislative treatment by authorizing payment of death compensation from an earlier date than is permitted by general law. To grant legislative relief in this case would be discriminatory against others in the same or similar circumstances and might form a precedent for similar relief in other cases.

The Veterans' Administration does not believe that private bills of this nature should receive favorable consideration.

Advice has been received from the Bureau of the Budget that there would be no objection by that Office to the submission of this report to your committee.

Sincerely yours,

CARL R. GRAY, Jr., *Administrator.*

